

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**DAVID SCOTT KOVEN SR., and
ROXANNE DIANE KOVEN,**

Plaintiffs,

V.

**TODD HAMMOND, Plattsmouth
Police Officer, LEROY LEWIS,
Plattsmouth Police Officer, DAVID
MURDOCH, Plattsmouth Police
Chief, ROBERT SORENSON,
Plattsmouth Police Officer, ANDREW
KENAN, Plattsmouth Police
Detective, and DAVID WALKER,
Plattsmouth Police Detective,**

Defendants.

8:10CV373

ORDER

This matter is before the Court on Defendants' Objections to Plaintiffs' Notices of Depositions & Subpoena ([filing 77](#)), Steve Rathman's Motion to Quash Subpoena ([filing 73](#)), and Plaintiffs' Motion for Modification of Scheduling Order ([filing 74](#)). The Court finds that these motions should be granted.

BACKGROUND

On May 31, 2013, the Court entered an order denying Plaintiffs' request for leave to serve Defendants, out of time, their statements regarding expert witnesses. ([Filing 61](#).) The Court found that Plaintiffs' counsel's mistake in calendaring the deadline for disclosure of expert witnesses was insufficient justification to warrant modification of the Court's progression order.

As a result of the Court's order denying Plaintiffs' request for leave, Plaintiffs terminated their attorney and promptly began searching for new counsel. Attorney Diana

Vogt entered an appearance on behalf of Plaintiffs on June 25, 2013. ([Filing 66.](#)) At the time Ms. Vogt entered her appearance, she issued notices to take the depositions of Defendants, as well as a subpoena to depose Steve Rathman, the Chief of Police of the City of Plattsmouth, Nebraska. The depositions were noticed for June 27, 2013, presumably because the deposition deadline in this case is June 28, 2013.

DISCUSSION

The Court finds that Defendants' Objections to Plaintiffs' Notices of Depositions & Subpoena ([filing 77](#)) and Steve Rathman's Motion to Quash Subpoena ([filing 73](#)) should be granted. The deposition notices were filed on June 25, 2013, and the subpoena was served on June 26, 2013. The depositions are supposed to take place on June 27, 2013. Plaintiffs have not provided Defendants or Mr. Rathman reasonable time to prepare for the depositions and requiring these individuals to appear on such short notice would be unduly burdensome for these individuals, as well as their attorneys.

The Court further finds that Plaintiffs' Motion for Modification of Scheduling Order ([filing 74](#)) should be granted. A progression schedule "may be modified only for good cause." [Fed. R. Civ. P. 16\(b\)\(4\)](#). "In demonstrating good cause, the moving party must establish that the scheduling deadlines cannot be met despite a party's diligent efforts." [Thorn v. Blue Cross & Blue Shield of Fla., Inc., 192 F.R.D. 308, 309 \(M.D. Fla. 2000\)](#) (internal quotation and citation omitted). Given Plaintiffs' former counsel's obvious neglect of this case and Plaintiffs' diligence in obtaining new counsel, in the interest of fairness, the Court will allow Plaintiffs a slight modification of the scheduling order. Specifically, the Court will modify the progression order as follows:

- a. Deposition and Written Discovery Deadline - July 29, 2013;
- b. Summary Judgment Deadline - August 12, 2013;
- c. Deadline for Motions in Limine Challenging Expert Testimony - August 12, 2013;

- d. Deadline for Disclosure of Nonexpert Witnesses and Trial Exhibits - October 8, 2013; and
- e. Deadline for Other Motions in Limine - October 8, 2013.

The Final Pretrial Conference and Trial remain as previously set.

Defendants and Mr. Rathman shall make themselves available to be deposed by the deposition deadline, unless they can show, by appropriate motion, why they are absolutely unable to do so. Counsel shall confer and work diligently to get these depositions scheduled as soon as possible.

IT IS ORDERED:

- 1. Defendants' Objections to Plaintiffs' Notices of Depositions & Subpoena ([filing 77](#)) is sustained.
- 2. Steve Rathman's Motion to Quash Subpoena ([filing 73](#)) is granted.
- 3. Plaintiffs' Motion for Modification of Scheduling Order ([filing 74](#)) is granted. The Court's progression order is modified as set forth above. Defendants and Mr. Rathman shall make themselves available to be deposed by the deposition deadline, unless they can demonstrate, by appropriate motion, why they are unable to do so.

DATED June 27, 2013.

BY THE COURT:

**S/ F.A. Gossett
United States Magistrate Judge**